

the extent to which each assistance program's funds support each program element. Insular Areas which choose to consolidate program assistance may be exempted from requirements of this subpart in accordance with Title V of Pub. L. 95–134.

§35.150 Evaluation of recipient performance.

The Regional Administrator will oversee each recipient's performance under an assistance agreement. In consultation with the applicant, the Regional Administrator will develop a process for evaluating the recipient's performance. The Regional Administrator will include the schedule for evaluation in the assistance agreement and will evaluate recipient performance and progress toward completing the outputs in the approved work program according to the schedule. The Regional Administrator will provide the evaluation findings to the recipient and will include them in the official assistance file. If the evaluation reveals that the recipient is not achieving one or more of the conditions of the assistance agreement, the Regional Administrator will attempt to resolve the situation through negotiation. If agreement is not reached, the Regional Administrator may impose any of the sanctions in 40 CFR part 30.

§35.155 Reallocation.

EPA has responsibility and authority for managing all financial assistance funds effectively. To better achieve the goals of the Clean Water Act, 205(g) reserves which have not been awarded will be returned to the State's construction grant allotment to support eligible construction activities except as provided in paragraph (c) of this section; 205(j) reserves which have not been awarded during the period of availability to the State will be reallocated to other States as construction grant funds. These funds are administered under §35.2010 of this subchapter and are not available for reallocation under this section. For the other environmental programs, EPA will consider reallocating any unawarded funds to achieve the objectives for which Congress appropriated them.

(a) *Funds remaining after initial award.* Funds remaining in a State's allotment after an initial assistance award and commitment to that State for that year may be awarded by the Regional Administrator to any eligible applicant during the Federal fiscal year. At the end of the year, funds not awarded by the Regional Administrator will be reallocated by the Administrator to accomplish the objectives of that program.

(1) The Regional Administrator may use such funds to make supplementary awards to that State for that program.

(2) Subject to any limitations contained in appropriations acts, the Regional Administrator may use such funds to support a Federal program required by law in that State in the absence of an acceptable State program.

(3) The Regional Administrator may also use such funds to supplement awards for that program to other eligible applicants within the Region.

(b) *Funds available because of no award.* Funds remaining in a State's allotment because there is no assistance award to that State in that year may be used in two ways.

(1) First, subject to any limitations contained in appropriations acts, the Regional Administrator may use such funds to support a Federal program required by law in that State in the absence of an acceptable State program.

(2) Otherwise, the Administrator will reallocate any available program funds to accomplish the objectives of that program.

(c) Public Water System Supervision and Underground Water Source Protection funds reserved for use on Indian lands which are not awarded to specific Indian Tribes by February 1 of a fiscal year, may be reallocated by the Administrator for supplementary awards to eligible Indian Tribes or to EPA regions for purposes of direct implementation on Indian lands.

(d) Beginning in FY 1990, on July 1 of each fiscal year, funds reserved under sections 106, 205(j)(1), 205(j)(5), and 319 of the Clean Water Act for eligible Indian Tribes, which have not been awarded by the Regional Administrator, shall be reallocated nationally by the Administrator for awards to other eligible Indian Tribes. Section

Environmental Protection Agency

§35.205

319 and 205(j)(5) funds awarded to an Indian Tribe treated as a State in a fiscal year which are not obligated by the end of the fiscal year shall be available to the Administrator for reallocation to other such Tribes in the following fiscal year.

[47 FR 44954, Oct. 12, 1982, as amended at 53 FR 37409, Sept. 26, 1988; 54 FR 14358, Apr. 11, 1989; 59 FR 13817, Mar. 23, 1994; 60 FR 2881, Jan. 12, 1995]

AIR POLLUTION CONTROL (SECTION 105)

§35.200 Purpose.

Section 105 of the Clean Air Act authorizes assistance to State, local, interstate, or intermunicipal air pollution control agencies (as defined in section 302(b) of the Act) to administer programs for the prevention and control of air pollution or implementation of national air quality standards. Associated program regulations are found in 40 CFR parts 50, 51, 52, 58, 60, 61, 62, and 81.

§35.201 Definitions applicable to section 105.

For purposes of section 105 of the Clean Air Act the following definitions are to be used in addition to the definitions in §35.105; except that the definition of "Recurrent expenditures" has the meaning set forth below:

Implementing means, within the context of section 105 of the Clean Air Act, as amended, any activity related to planning, developing, establishing, carrying-out, improving, or maintaining programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

Nonrecurrent expenditures means those expenditures which are shown by the recipient to be of a nonrepetitive, unusual, or singular nature such as would not reasonably be expected to recur in the foreseeable future. Costs categorized as nonrecurrent must be approved in the assistance agreement or an amendment thereto. All other approved project costs are deemed to be recurrent.

Recurrent expenditures means those expenses associated with the activities of a continuing environmental program. All expenditures are considered

recurrent unless justified by the applicant as nonrecurrent and approved in the assistance award or an amendment thereto.

[60 FR 371, Jan. 4, 1995]

§35.205 Maximum Federal share.

(a) The Regional Administrator may provide State, local, interstate, or intermunicipal agencies up to three-fifths of the approved costs of implementing programs for the prevention and control of air pollution or implementing national primary and secondary ambient air quality standards. Air pollution control agencies currently receiving grants and contributing less than the required minimum of two-fifths of the approved program costs shall have until November 15, 1993 to increase their contribution to the required level.

(b) Subject to the conditions set forth below, the Regional Administrator may, at the request of the Governor of a State or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, waive, for a 1-year period, all or a portion of the cost-sharing requirement of paragraph (a) of this section. The Regional Administrator may renew the waiver for no more than 2 years so long as the total waiver period does not exceed 3 years from the approval date of a State's permit program required under section 502 of the Clean Air Act (Act).

(1) The waiver may be approved on a case-by-case basis and only when a State or local government's nonfederal contribution is reduced below the required two-fifths minimum as a result of the redirection of its nonfederal air resources to meet the requirements of section 502(b) of the Act.

(2) In applying for a waiver the Governor or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, must:

(i) Describe the extent of fiscal and programmatic impact on the agency's section 105 program as a result of the transfer of nonfederal resources to support the program approved by EPA under section 502(b) of the Act.

(ii) Provide documentation of the amount of the cost-sharing shortfall and the programmatic activities that